IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/08/2003

CORAM

THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL.O.P.NO. 933 of 2001
and Crl.OP.Nos. 934, 24656 AND 24657 OF 2001
AND
CRL.M.P.NOS.366, 368, 8498, 8499, 8500, 8501, 8502 AND 8503 OF 2001

Mrs. Usha Devi
Proprietrix
M/s. Bell Foods (Marine Division)
Pallichal Road
Kochi-682 005
Kerala .. Petitioner

-Vs-

M/s. Clarion Shipping Agencies Pvt. Ltd.
Rep. By its Power Agent
Capt. Nitin Puri
General Manager
S.M. Plaza, 1st Floor
45, Armenian Street
Chennai-600 001 .. Respondent

These petitions are preferred under Section 482 of Cr.P.C. to call for the records and quash the complaints in C.C.Nos.3407, 3408, 3831 and 3830 of 2000 on the file of the VII Metropolitan Magistrate, George Town, Chennai.

For Petitioner : Mr.K.S.Natarajan

For Respondent : Mr.V.Aravamudan

:COMMON ORDER

All the four petitions are brought forth by the petitioner, who is shown as accused in four calendar cases, namely C.C.Nos.3407, 3408, 3 8 31 and 3830 of 2000 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai.
2. All the four private complaints were lodged by the respondent herein under Section 138 of Negotiable Instruments Act alleging that in respect of the service rendered by the complainant/respondent, 10 cheques were issued. The details of the cheque Numbers and amounts are given below:

Cheque No.
Date
Amount
102772
18.09.1999
Rs.191672.00
103722
11.10.1999
Rs.191420.00
102785
25.09.1999
Rs.191714.00
102774
18.09.1999
Rs.191672.00
103762
22.12.1999
Rs.229004.00
103758
10.12.1999
Rs.229004.00
103757
15.12.1999
Rs.229004.00
103759
05.12.1999
Rs.229004.00
103761
31.12.1999
Rs.229007.00
103760
31.12.1999
Rs.292641.16

Total
Rs.2204142.16

The cheques were presented for collection by the complainant with their Banker Standard Chartered Bank and the same were returned for the reason "Payment stopped by the drawer". The complainant was put on notice on 20.1.2000. The statutory notices were issued as contemplated under the Negotiable Instruments Act. Since the demands made therein were not met, the complainant was constrained to lodge four complaints before the VII Metropolitan Magistrate. On service of summons, the respondent/accused has brought forth these original petitions seeking to quash all the four complaints.

3. The learned counsel appearing for the petitioner inter-alia raised three submissions, which according to him would be suffice to quash the proceedings pending on the file of said Metropolitan Magistrate. All these cheques were presented on 4.1.2000. When the communications were addressed by the accused to stop the payment, they were stopped and returned with a memo on the very day. The legal notices were issued on 31.1.2000 belatedly, and thus, they were not in accordance with the provisions of the Negotiable Instruments

Act. In order to substantiate his contentions, he took the Court to the notice issued by the complainant, wherein a typographical error was found. Originally, the complainant was put on notice as to the dishonouring of the cheques on 5.1.2000 and the same has been subsequently corrected as 2 0.1.2000. Apart from that even in the complaints, it has been specifically stated that it came to the knowledge of the complainant on 18.1.200 0 and not on 20.1.2000. This would be indicative of the fact that in order to get over the legal impediment and to save the period of limitation, they have stated as if the complainant was put on notice only on 20.1.2000, but he was actually put on notice on 5.1.2000, and thus, the notice was one belated, and hence, the provision as to the statutory notice has not been strictly complied with. Added further the learned counsel that all the transactions were made in Cochin and the jurisdiction was vested with the Sessions Court, Cochin. The accused has got sufficient funds, but the payments were stopped by the accused due to the non delivery of cargo as agreed upon between the parties, and hence, on that ground, the complaints should not be proceeded with.

4. At the out set, it has got to be pointed out that as to the question of jurisdiction of the Court and as to the stoppage of the payment, the same have to be decided by the Court only on the evidence to be adduced by both sides. So far as the first contention that the notice was one belated and not in accordance with the provisions of the Negotiable Instruments Act is concerned, the Court cannot go into the matter at this stage. According to the complainant, all the 10 cheques were presented for collection and the complainant was put on notice only on 20.1.2000 and notices were issued on 31.1.2000, and thus, within the stipulated time, the notices were issued, and hence, notices were in time. But, contrary to the above, the learned counsel for the petitioner states that the complainant was put on notice on 5.1.2 000 itself and not on 20.1.2000 as contended by the complainant. It is for the complainant to substantiate that the notices were issued in accordance with law. It is pertinent to point out that memo was issued by the Bank concerned and according to the counsel for the complainant, sufficient documentary evidence was adduced before the lower court. Under the stated circumstances, the Court is of the view that when the complainant was put on notice as to the stoppage of payment or as to dishonour of cheques, this question of fact has got to be gone into by the court below and it can be looked into only after adducing evidence both oral and documentary. Under the stated circumstances, it would be too premature to decide such a question and the evidence has got to be necessarily adduced and also the factual position has got to be gone into and decided by the trial court, and hence, the Court is unable to appreciate all or any one of the contentions put forth by the petitioner's side. Hence, the four petitions have got to be necessarily dismissed. Accordingly, these petitions are dismissed. Consequently, connected Cr.M.Ps are also dismissed.

5. The learned counsel for the petitioner made a submission that the accused is ordinarily a resident of Cochin and on the medical ground also, he cannot come over to Chennai and appear before the Court, and hence, his appearance has got to be dispensed with during the pendency of the proceedings before the trial court. Though the Court cannot pass any order at this stage, a direction is issued to the concerned Court to consider the request of the petitioner on the merits of the matter, if and when an application is filed in that regard.

Index : Yes
Internet : Yes
vvk
To
VII Metropolitan Magistrate
George Town, Chennai